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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,273	06/22/2001	David W. Burns	2207/ 11315	8639
25693	7590	02/07/2005	EXAMINER	
KENYON & KENYON (SAN JOSE) 333 WEST SAN CARLOS ST. SUITE 600 SAN JOSE, CA 95110			MEONSKE, TONIA L	
			ART UNIT	PAPER NUMBER
			2183	

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/888,273	BURNS ET AL.	
	Examiner Tonia L Meonske	Art Unit 2183	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 23 November 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-30 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-3, 7, 9-11, 15, 17-19, 23, and 25-27 is/are rejected.
 7) Claim(s) 4-6,8,12-14,16,20-22,24 and 28-30 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2/3/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed February 3, 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Objections

2. Claims 7, 15, and 23 are objected to because of the following informalities:

- In claim 7, line 5, please add the limitation “ of.” after the limitation “consisting”,
- In claim 15, line 5, please add the limitation “ of.” after the limitation “consisting”, and
- In claim 23, line 7, please add the limitation “ of.” after the limitation “consisting”.

3. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3, 7, 9-11, 15, 17-19, 23, and 25-27 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Sager, US Patent 6,542,921.

6. The rejections are respectfully maintained and incorporated by reference as set forth in the last office action, mailed on February 10, 2004.

Response to Arguments

7. Applicant's arguments filed with respect to claims 1-3, 7, 9-11, 15, 17-19, 23, and 25-27 have been fully considered but they are not persuasive.

8. On pages 12-14, Applicant argues with respect to claim 1 in essence:

"Applicant respectfully submits that nowhere in Sager (including the Figures and cited sections) is the disclosure, teaching or suggestion of at least "a method of assigning thread priority comprising...loading a preliminary value to a thread precedence counter..." as recited in the embodiment of amended claim 1. Further, support can be found in page 6 line 8 through page 7 line 14 of the specification."

However, Sager has in fact taught a method of assigning thread priority comprising...loading a preliminary value to a thread precedence counter. As an initial matter, claimed subject matter, not the specification, is the measure of invention. Limitations in the specification cannot be read into the claims for the purpose of avoiding the prior art. *In re Self*, 213 USPQ 1,5 (CCPA 1982); *In re Priest*, 199 USPQ 11,15 (CCPA 1978). In this case, Sager has taught loading a preliminary value to a thread precedence counter (abstract, Figure 9, element 905, "Priority Period", columns 11 and 12, The priority duration, or priority period, for each thread is initialized to some predetermined period.). Therefore this argument is moot.

9. On pages 14-15, Applicant argues with respect to claim 7 in essence:

"As discussed above, the cited sections in Sager disclose that based upon a determination whether the first duration has expired in a given processing cycle has expired, the

processing priority is assigned to the second thread for a second duration. However, Applicant respectfully submits that nowhere in Sager (including the Figures and cited sections) is the disclosure, teaching or suggestion of at least “assigning priority to said second thread in response to one of a plurality of conditions being true, the condition including...and if there is not an indication of approaching instruction side starvation for said first thread”. Further support for the indication of approaching instruction side starvation can be found on page 9 line 3 of the specification.”

However, Applicant has in fact taught assigning priority to said second thread in response to one of a plurality of conditions being true, the condition including...and if there is not an indication of approaching instruction side starvation for said first thread. In Sager (Figure 9, elements 913 and 917) when the priority of the second thread is assigned in response to only the current priority period expiring, element 913, the condition is true that there is not an indication of approaching instruction side starvation for said thread. Therefore this argument is moot.

10. On pages 15-16, Applicant argues with respect to claim 17 in essence:

“The Office Action asserts that Sager discloses a thread precedence counter coupled to said control logic wherein priority is assigned to a said second thread after said thread precedence counter expires (abstract, Figure 9, element 905, element 917, “Priority Period”). However, Applicants submit that nowhere in Sager (including the cited section and Figures) is the teaching, suggestion or disclosure of a “...thread precedence counter coupled to aid control logic wherein priority is assigned to said second thread after said thread precedence counter expires”. Support for the thread precedence counter can be found a page 6 line 18. However, such thread precedence is not taught, suggested or disclosed anywhere in Sager.”

However, Sager has taught a thread precedence counter coupled to said control logic wherein priority is assigned to said second thread after said thread precedence counter expires. As an initial matter, claimed subject matter, not the specification, is the measure of invention. Limitations in the specification cannot be read into the claims for the purpose of avoiding the prior art. In re Self, 213 USPQ 1,5 (CCPA 1982); In re Priest,

199 USPQ 11,15 (CCPA 1978). In this case, the priority period of Sager is the claimed thread precedence counter (abstract, Figure 9, element 905, element 917, “Priority Period”). In order for the processor control logic of Sager to switch between the different threads based on the priority period, the thread precedence counter must be coupled, either directly or indirectly, to the control logic. Also in Sager, when the priority period for one thread, or a first thread expires, priority is assigned to the other, or the second thread (Figure 9). Therefore this argument is moot.

Allowable Subject Matter

11. Claims 4-6, 8, 12-14, 16, 20-22, 24, and 28-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

13. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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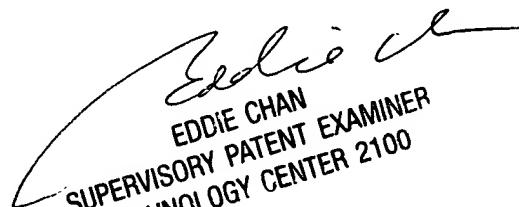
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tonia L Meonske whose telephone number is (571) 272-4170.

The examiner can normally be reached on Monday-Friday, 8-4:30.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eddie P Chan can be reached on (571) 272-4162. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tlm



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